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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,121	03/17/2004	Morton Beroza	0082.04	5292
25295	7590	10/14/2005	EXAMINER	
USDA, ARS, OTT 5601 SUNNYSIDE AVE RM 4-1159 BELTSVILLE, MD 20705-5131			PARSLEY, DAVID J	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 10/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/803,121

Applicant(s)

BEROZA, MORTON

Examiner

David J. Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 18-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **Detailed Action**

### *Amendment*

1. This office action is in response to applicant's amendment dated 9-28-05 and this action is final.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18- are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 1,056,535 to Grimes et al. or U.S. Patent No. 2,254,948 to Kubalek.

Referring to claim 18, 21 and 23, Grimes et al. and Kubalek both disclose a trap comprising a device/method for providing uniform emission of a flying insect attractant, consisting of a container – at 10,13,14 of Kubalek or – at 10,14, of Grimes et al., having a top surface, a bottom surface and side walls – see for example figures 1-2 of Kubalek and figure 2 of Grimes et al., having a composition of at least one volatile liquid attractant – at 12,23, of Kubalek and – at 11, of Grimes et al., for targeting at least one flying insect species, and a first opening – proximate 11 of Kubalek and proximate 16 of Grimes et al., in the top of the container

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– see for example figures 1-2 of Kubalek and figure 2 of Grimes et al., to receive a wick – at 11 of Kubalek and - at 16 of Grimes et al., an adjustable wick – at 11 of Kubalek and – at 16 of Grimes et al., frictionally inserted into the first opening of the container – see for example figures 1-2 of Kubalek and figure 2 of Grimes et al., wherein the wick area exposed to the atmosphere can be increased or decreased over time to maintain maximum attractant emission – see for example figures 1-2 of Kubalek and figure 2 of Grimes et al., and a second opening – at 19 or 20 of Kubalek and – proximate 14a of Grimes et al., in the top of the container, smaller than the first opening and large enough to prevent film closure by a liquid – see for example figures 1-2 of Kubalek and figure 2 of Grimes et al., wherein the second opening maintains air pressure in the container wherein the container emits the at least one volatile attractant for at least about six months without replenishment of the attractant – see for example figures 1-2 page 1 column 2 lines 34-37 of Kubalek and figure 2 of Grimes et al. Further, the Kubalek and Grimes et al. references both disclose hanging the device – see at 21-22 of Kubalek and at 13 in figure 1 of Grimes et al.

Claims 19 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Kubalek.

Referring to claims 19 and 22, Kubalek discloses the composition further includes at least one volatile insecticide wherein the at least one volatile insecticide is absorbed by the wick – see for example figure 2 and page 1 column 2 lines 26-37.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grimes et al. as applied to claims 18 and 21 above, and further in view of Kubalek.

Referring to claims 19 and 22, Grimes et al. further discloses a volatile insecticide – see for example page 1 lines 57-72. Grimes et al. does not disclose the wick absorbs the volatile insecticide. Kubalek does disclose the wick – at 11, absorbs the volatile insecticide – see for example figure 2 and page 1 column 2 lines 26-37. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Grimes et al. and add the wick absorbing the volatile insecticide of Kubalek, so as to allow for the volatile insecticide to be inside the container and thus out of reach of a person or pet.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kubalek or Grimes et al. as applied to claim 18 above, and further in view of U.S. Patent No. 4,908,977 to Foster. Kubalek and Grimes et al. further disclose the first opening – proximate 11 of Kubalek and – proximate 16 of Grimes et al., being of a size to frictionally hold a wick – at 11 of Kubalek and – at 16 of Grimes et al. – see for example figures 1-2 of Kubalek and figure 2 of Grimes et al., and the second opening – at 19 or 20 of Kubalek and – proximate 14a of Grimes et al., is elongated and narrower than the first opening – see for example figures 1-2 of Kubalek and figure 2 of Grimes et al. Kubalek and Grimes et al. do not disclose the first and second opening form a single opening. Foster does disclose the first opening – at the top of the container – at 1,

and the second opening – at any of the openings – at 3 form a single opening – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kubalek or Grimes et al. and add the first and second opening forming a single opening of Foster, so as to allow for the device to allow for the insects to access the volatile insecticide in the container.

### *Response to Arguments*

4. Applicant's amendments dated 9-28-05 overcome the 35 U.S.C. 112 2<sup>nd</sup> paragraph rejections set forth in paragraph 2 of the office action dated 6-28-05.

Regarding claims 18, 21 and 23, both the Grimes et al. US 1056535 and the Kubalek US 2254948 references disclose the invention as claimed as seen in paragraph 2 of this office action above. Further, regarding claims 18, 21 and 23, the Kubalek reference US 2254948, applicant argues that the Kubalek reference does not disclose a trap or mass trapping of the insects. As seen in figures 1-2 and page 1 column 2 lines 12-20, the device of Kubalek kills insects and thus traps the insects. Further, Kubalek discloses a volatile insect attractant as seen in page 1 column 2 lines 22-37 which states that a poison may be combined with sugar or molasses and thus the combined composition makes a volatile insect attractant liquid. Applicant further argues that the Kubalek reference does not disclose targeting a single insect species. However, as seen in applicant's claims the claim language states that at least one insect species is targeted which is an open ended limitation which implies that more than one insect species can be targeted. Further, the device of the Kubalek reference is capable of adjusting the wick – at 11 as seen in figures 1-2

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where the wick is movably connected to the lid of the container – at 14 and the device of Kubalek is capable of emitting the volatile attractant up to at least 6 months as seen in page 1 column 2 lines 34-37. Further, the wick – at 16 of Grimes et al. and – at 11 or 29 or 37 of Kubalek is frictionally adjustable in that as seen in figure 5 of Grimes et al. and in figures 1-5 of Kubalek, the wicks are loosely attached to their respective containers and thus are movable/adjustable with respect to their containers and the wicks are in contact with the containers allowing for frictional forces between the containers and their respective wicks to be present. Further, the Grimes et al. reference as seen in figure 2, does not contain the items 17 and 18 that applicant argues are not part of the claimed invention using the closed ended terminology of “consisting of” and therefore it is deemed that the assembly of figure 2 of the Grimes et al. reference discloses the claimed invention in terms of the closed ended language. Further, the Kubalek reference does disclose a volatile liquid attractant as seen in page 1 column 2 lines 22-25 where a poison is used in the device that contains attractants such as sugar or molasses and the presence of poison in the device makes the composition volatile.

Regarding claims 19 and 22, the Grimes et al. reference does disclose a volatile insecticide as seen in page 1 lines 57-94 where a volatile insecticide comprising water or another liquid is used with the device. Further, applicant argues that the poison of the Kubalek reference is not volatile in that it lasts in the device practically indefinitely. However, applicant's invention uses a volatile agent which lasts at least 6 months in the device which is a period of time which can be construed as practically indefinitely and therefore it is deemed that the Kubalek reference can be used to disclose the claimed limitations. Further, both the devices of Kubalek and the Grimes et al. are of similar structure which is a container housing a liquid having a closed to with

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an opening through which a wick is extended through, and both have a similar function to control insect pest populations. Therefore, the combination of the Grimes et al. and Kubalek references is deemed proper given the motivation as stated in paragraph 3 of this office action.

Regarding claim 20, applicant relies upon the arguments to claims 18-19 and 21-23 and therefore see the response to these arguments in this paragraph of this office action above. Further, the motivation to combine the Kubalek reference and the Foster reference US 4908977 is shown above in paragraph 4 of this office action and the motivation to combine these references is found in the generally available knowledge to one of ordinary skill in the art.

### *Conclusion*

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DP

David Parsley  
Patent Examiner  
Art Unit 3643



**PETER M. POON**  
**SUPERVISORY PATENT EXAMINER**

10/12/05